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that in this case there is a provision that, if any of the children of the brother die leaving issue, such issue shall take the deceased parent's share, and, if his ward die without issue, the entire estate is to go to his brother's children. There is nothing in that language which shows that the testator did not intend his gift to be to a class, or which furnishes any sufficient reason for holding that it was not such a gift.

Where the gift is to a class and it fails as to one of the class because of death, revocation, or any other cause, the survivors of the class will take. 1 Jarman on Wills (5th Ed.) 341; Humphrey v. Taylor, Ambler's Rep. 136; Short v. Gashell, 4 East. 419.

The effect of the revocation of the gift to his ward by the codicil to the testator's will was therefore to take her out of the class and leaves the entire residuum to go to the children of the testator's brother who survived the testator and the issue of the deceased child.

We are of opinion, therefore, that there is no error in the decree appealed from, and that it should be affirmed.

Affirmed.

DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

AULTMAN & TAYLOR MACHINERY CO. v. GAY.

Nov. 19, 1908.

[62 S. E. 946.]

1. Sales (§ 161*)—Performance—Delivery.—F., acting as agent for defendant, sold an engine to the T. Company at H., and the engine was consigned by defendant to itself, care of F. at H., pursuant to an order contained in a printed form furnished by defendant to be signed by the purchaser. On arrival, the engine was put together on the car by F., assisted by another person employed by him. The printed order specified no particular place for delivery, but stipulated that the engine was shipped as the property of defendant. Held, that the act of F. and his assistant in setting up the engine and in removing

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

it from the car, and testing it, did not constitute a delivery to the T. Company.

[Ed. Note.—For other cases, see Sales, Dec. Dig. § 161.*]

2. Principal and Agent (§ 159*)—Injury to Third Person—Scope of Authority.—Where F., acting as the seller's agent, sold an engine to the T. Company, and the engine was consigned by the seller to itself, in care of F., his act in securing an assistant, setting up the engine, running it from the car and testing it was within the scope of his authority, so that the seller was liable for damages from fire resulting from the negligent operation of the engine during the test.

[Ed. Note.—For other cases, see Principal and Agent, Cent. Dig. §§ 600-603; Dec. Dig. § 159.*]

3. Appeal and Error (§ 1151*)—Disposition of Cause—Modification—Amount.—In an action for damages to a house which plaintiff owned in common with others, the court instructed the jury to assess plaintiff's damages at a certain fractional part of the value of the property, which part, it was admitted on appeal, was slightly too large. The jury placed a valuation on the house. Held, that the court on appeal would modify the judgment by giving plaintiff the true fractional portion of such valuation to which he was entitled.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4501; Dec. Dig. § 1151*]

4. Words and Phrases—"Knocked Down."—The term "knocked down," used to describe the condition of a traction engine on arrival at its destination, means that its several parts had to be put together in order to its operation.

WRIGHT et al. v. JOHNSON et al.

Nov. 19, 1908.

[62 S. E. 948.]

1. Partition (§ 95*)—Decree—Operation and Effect.—Acts 1885-86, p. 525, c. 466 (Code 1887, § 2565 [Code 1904, p. 1313]), providing that a decree of partition ex proprio vigore shall vest title in the several co-owners without execution of conveyances, and that the act shall be held retrospective, can operate retrospectively only where the decree allotted the lands to the rightful owner, and cannot apply to vest in a husband title to lands allotted to him by partition, but which belonged to his wife as heir.

[Ed. Note.—For other cases, see Partition, Dec. Dig. § 95.*]

2. Statutes (§ 268*)—Construction—Retroactive Operation.—A

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.